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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
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Petition of U S WEST Communications, )  
Inc. for a Declaratory Ruling Regarding )  
the Provision of National Directory )  
Assistance )

CC 97-172

PETITION FOR DECLARATORY RULING

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July 17, 1997

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## SUMMARY

In this Petition, U S WEST Communications, Inc. ("U S WEST") seeks a declaratory ruling that the Communications Act of 1934, as amended by the Telecommunications Act of 1996, does not prohibit it from providing National Directory Assistance to its subscribers. U S WEST now offers National Directory Assistance in two states; the service enables U S WEST customers to obtain telephone numbers from anywhere in the United States by dialing 1+411.

Recently, MCI filed a complaint alleging that a similar service provided by Ameritech violates Section 271 of the Communications Act. Because this action could cast some doubt on the validity of U S WEST's National Directory Assistance, we are filing this Petition. Herein, U S WEST demonstrates that the Communications Act permits U S WEST to provide a National Directory Assistance service and that U S WEST may provide that service on a centralized (interLATA) basis and utilizing the "411" dialing code. We thus ask the Commission to issue a ruling declaring that U S WEST's National Directory Assistance conforms to the Communications Act in all respects.

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 Petition of U S WEST Communications, )  
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 Assistance )

U S WEST Communications, Inc. (“U S WEST”), pursuant to Section 1.2 of the Federal Communications Commission’s (“Commission”) rules,<sup>1</sup> hereby respectfully requests a Declaratory Ruling that the Communications Act of 1934, as amended by the Telecommunications Act of 1996, does not prohibit U S WEST from providing National Directory Assistance.

On April 10, 1997, MCI Telecommunications Corporation ("MCI") filed a Complaint with the Commission against Ameritech's provision of a National Directory Assistance service.<sup>2</sup> MCI contended that the Ameritech National Directory Service constituted an unlawful interLATA telecommunications service and an inappropriate use of 411 dialing patterns. Because U S WEST offers a similar service, its interests could be jeopardized if the Commission were to issue a decision on National Directory Assistance service without U S WEST's full

<sup>2</sup> Notice of Formal Complaint, File No. E-97-19, filed Apr. 10, 1997, served Apr. 24, 1997 (“MCI Complaint”). U S WEST Motion to Intervene as a Party Defendant, filed June 3, 1997; Motion to Withdraw Filing, filed June 9, 1997.

participation. Moreover, there are technical differences between U S WEST's National Directory Assistance service and the service described by Ameritech in its Answer to the MCI Complaint<sup>3</sup> (caused primarily by U S WEST's rural geography) which could, if the Ameritech case were litigated in a vacuum, result in a decision that Ameritech's service is lawful, but U S WEST's is not.

Fully recognizing that U S WEST would not be bound by a decision in a complaint proceeding to which it was not a party, U S WEST was nevertheless concerned that the Commission's first review of the legal issues raised by Bell Operating Company ("BOC") National Directory Services be made on as full a record as possible. For that reason, U S WEST filed a Motion to Intervene as a Party Defendant in the MCI Complaint proceeding.<sup>4</sup> The staff of the Common Carrier Bureau concluded, however, that the Commission's rules do not contemplate such a Petition. The staff preferred to treat the MCI Complaint solely as a fact-specific complaint under Section 208 of the Act, and not to use the Complaint as a vehicle for more far-reaching analysis or pronouncements. They suggested U S WEST withdraw that Petition and file a Petition for Declaratory Ruling instead. Recognizing that such a decision is well within the discretion of the staff, U S WEST withdrew its Motion on June 9, 1997.<sup>5</sup> No complaint has been filed with the Commission regarding U S WEST's National Directory Assistance service.

U S WEST has therefore filed this Petition to enable the Commission to

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<sup>3</sup> Answer of Ameritech, File No. E-97-19, filed May 27, 1997.

<sup>4</sup> See note 2, supra.

<sup>5</sup> See note 2, supra.

confirm that the Communications Act does not prohibit a BOC from providing National Directory Assistance as U S WEST provides it.

A. U S WEST's National Directory Assistance Service

Like Ameritech, U S WEST now offers a National Directory Assistance service on a limited basis. Customers within Colorado and New Mexico who dial U S WEST's directory assistance (1+411) may request a telephone number from anywhere in the country. If the requested number is "local" (that is, within the LATA or NPA), the operator will provide the number; if the requested number is not local, the call is transferred to a different operator who has access to a database containing national numbers.<sup>6</sup> U S WEST does not offer call completion or "reverse search" capabilities with its National Directory Assistance.

Though U S WEST's National Directory Assistance is similar to Ameritech's, it differs in one significant respect. Because of the extensively rural nature of its territory, U S WEST can provide all of its Directory Assistance services, including National Directory Assistance, more economically from centralized locations. Thus a caller seeking a number, whether local or national, will frequently get that number from an operator in a different LATA, or in a different state altogether. Moreover, the operator will typically get that number from a centralized database in yet another LATA. This use of centralized operators and databases has been in place since before divestiture. U S WEST provides the transport to connect calling customers, even if such transport crosses LATA boundaries. U S WEST has

likewise provided this transport since before divestiture.

U S WEST's National Directory Assistance service is a straightforward Directory Assistance service offered via duly filed and approved state tariffs. A customer calls 1+411 and is given a telephone number which corresponds to a specified name and address. The service does not involve reverse search capability – matching a name or address to a specified telephone number. The only new or different feature offered by U S WEST's National Directory Assistance service is the range of numbers available to the calling customer. Otherwise, National Directory Assistance service is configured exactly like what has been considered traditional Directory Assistance service.

U S WEST's fundamental point is a simple one. Nothing in the Act or the Commission's rules seeks to regulate or limit the numbers Directory Assistance callers can obtain by calling 1+411. Directory Assistance is a permissible local exchange function, and its lawfulness does not depend on what numbers reside in the database or operator service center. That such local exchange functions can be provided on a centralized basis is well established.

In fact, until MCI's Complaint against Ameritech (and an MCI Complaint, subsequently withdrawn, against U S WEST's National Directory Assistance tariff filing in New Mexico), U S WEST's National Directory Assistance service appeared to be non-controversial. Thus the possibility that U S WEST's duly tariffed intrastate National Directory Assistance service could be held to violate the Act or

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<sup>6</sup> If a Directory Assistance caller requests a "national" number and then an additional local number, the National Directory Assistance operator will provide

the rules of the Commission was, to say the least, surprising.

In any event, with the MCI Complaint pending, the time has come for the Commission to exercise its power under Section 1.2 of the Commission's rules and issue a declaratory ruling to the effect that U S WEST's National Directory Assistance service, as described herein, does not violate any provision of the Communications Act or the Commission's rules.

## II. ARGUMENT

### A. The Communications Act Permits U S WEST To Provide National Directory Assistance Service.

No provision of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, prohibits a BOC from providing Directory Assistance, and no provision of the Act purports to limit the scope of the telephone numbers a BOC may provide to Directory Assistance customers. Indeed, no one claims the BOCs cannot lawfully provide Directory Assistance service.

Despite this, MCI and others will allege that U S WEST's provision of National Directory Assistance service violates Section 271 of the Act because customers can (and often will) use the telephone numbers they obtain from National Directory Assistance to make an interLATA telephone call, thus turning the lawful provision of directory assistance services into an unlawful service.<sup>7</sup>

Even a moment's reflection illustrates the absurdity of this position. Local exchange carriers ("LEC") have provided Directory Assistance service for decades.

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that in-region number.

<sup>7</sup> See MCI Complaint at 11-13.



A customer calls the operator and requests a telephone number associated with a particular individual or business. Assuming that the customer does not request call completion from the operator (a service U S WEST does not offer as part of National Directory Assistance), the transaction is complete at this point. There is absolutely nothing U S WEST or anyone else can do to prevent the customer from using that number to make an interLATA call. This is as true of more traditional Directory Assistance services as it is with National Directory Assistance. Once the customer possesses the telephone number of the desired individual, how the customer uses that number is irrelevant to the essential nature of Directory Assistance itself.

Indeed, U S WEST currently offers, via interstate tariff, Electronic Directory Assistance (“EDA”), which allows customers to obtain telephone numbers from anywhere within U S WEST’s territory via a computer or terminal; customers provide the telecommunications access (dial-up or a dedicated facility) to the host computer, which is located in Omaha, Nebraska. EDA customers frequently use the numbers they obtain for the purpose of making or assisting in the making of interLATA telephone calls. U S WEST began providing this service in 1990.

Statutory analysis confirms what logic dictates – that there is not, nor can there be, any statutory prohibition against the provision of a Directory Assistance service based on the customer’s ability to use a retrieved number to make an interLATA telephone call.

Sections 271(a) and (b), which articulate the Act’s interLATA prohibition, contain no reference whatever to Directory Assistance. Those provisions generally prohibit the BOCs from providing “interLATA services,” which the Act defines as –

telecommunications between a point located in a local access and transport area and a point located outside such area.<sup>8</sup>

“Telecommunications,” in turn, is –

the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.<sup>9</sup>

An “interLATA service” is thus the interLATA transmission of information chosen by the user between or among points selected by the user.

Without more, providing a telephone number – any telephone number – is not the transmission of information across a LATA boundary. Therefore, Section 271 cannot reasonably be read to prohibit the provision of National Directory Assistance.

Some will nonetheless claim – as MCI does in its Complaint against Ameritech – that National Directory Assistance violates Section 271 because such a service would have violated the interLATA prohibition of the Modification of Final Judgment.<sup>10</sup> But even assuming the MFJ Court would have made such a determination, that does not bind the Commission and it does not dictate the result under the Communications Act. The interLATA prohibition in the Act differs from the MFJ’s.

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<sup>8</sup> 47 U.S.C. § 153(21).

<sup>9</sup> 47 U.S.C. § 153(43).

<sup>10</sup> Id. ¶ 34. Modification of Final Judgment, United States v. American Tel. and Tel. Co., 552 F. Supp. 131 (D.D.C. 1982), aff’d sub nom. Maryland v. United States, 460 U.S. 1001 (1983). The Consent Decree resulting from this litigation was subsequently terminated. See Order, Civil Action No. 82-0192 (D.D.C. Apr. 11, 1996).

The MFJ prohibited the BOCs from providing “interexchange [interLATA] telecommunications services.”<sup>11</sup> The MFJ did not define this term, but it did define “interexchange [interLATA] telecommunications” as –

telecommunications between a point or points located in one [LATA] and a point or points located in one or more other [LATAs] or a point outside [a LATA].<sup>12</sup>

It defined “telecommunications service” to mean –

the offering for hire of telecommunications facilities, or of telecommunications by means of such facilities.<sup>13</sup>

An interLATA telecommunications service – for purposes of the MFJ – was thus the offering for hire of interLATA telecommunications facilities or of interLATA telecommunications. This definition of the prohibited function enabled the MFJ Court to rule in the Shared Tenant Services decision<sup>14</sup> that the MFJ prohibited the BOCs not just from transporting calls between LATAs, but from –

engaging in activities that comprise the business of providing interexchange services.<sup>15</sup>

The Court explained:

If the decree had been intended to restrict the [BOCs] only from the interexchange transmissions themselves, a prohibition on the provision of “interexchange telecommunications” would have been entirely adequate.<sup>16</sup>

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<sup>11</sup> United States v. AT&T, 552 F. Supp. at 227 § II.D.1.

<sup>12</sup> Id. at 229 § IV.K.

<sup>13</sup> Id. at 229 § IV.P.

<sup>14</sup> United States v. Western Elec. Co., 627 F. Supp. 1090 (D.D.C. 1986).

<sup>15</sup> Id. at 1100.

<sup>16</sup> Id.

The Act does precisely that: it prohibits the BOCs from providing “interLATA services,” which it defines as interLATA telecommunications. Indeed, the Act’s definition of “interLATA service” is effectively identical to the MFJ’s definition of “interexchange [interLATA] telecommunications.” The Act thus does exactly what the MFJ Court suggested it should if it intended to prohibit only the interLATA transmission of information.

Even though the MFJ Court might – if asked – have ruled that the MFJ prohibited the BOCs from providing a National Directory Assistance service, that fact has no bearing on the proper interpretation of the Act: the MFJ and the Act are not the same. The Act’s interLATA prohibition takes away even the slender reed of support that MCI attempts to lean on in its Complaint against Ameritech. National Directory Assistance is a permissible BOC service.

**B.     The Communications Act Permits U S WEST To Provide  
        National Directory Assistance On A Centralized (InterLATA) Basis**

With that fundamental issue settled, the fact that U S WEST (unlike Ameritech) provides National Directory Assistance on a centralized basis – just as it provides all its Directory Assistance services – is irrelevant. U S WEST frequently transports a Directory Assistance call to a distant LATA where its Directory Assistance operators are located. If National Directory Assistance services were to be classified as an information service, rather than part of Directory Assistance, such a centralized configuration might be deemed to constitute an interLATA information service which could be offered only through a separate subsidiary pursuant to Section 272(a)(2)(C). National Directory Assistance is not an

information service, however, and the Communications Act does not prohibit U S WEST from providing this service in this manner.<sup>17</sup>

Our position in this regard has two parts: 1) like all Directory Assistance, National Directory Assistance is not an information service, but a function of the provision of telecommunications service; and 2) like all Directory Assistance, National Directory Assistance may be provided by means of centralized operator service centers connected by interLATA, official service circuits.

1. National Directory Assistance Is Not An Information Service

In its Separate Affiliate Order,<sup>18</sup> the Commission determined that all the services it had determined to be “enhanced” are also “information services.”<sup>19</sup> The Commission further determined, however, that services it had classified as “adjunct to basic” will be classified as telecommunications services, and not information services.<sup>20</sup>

Services considered adjunct to basic meet the literal definition of an enhanced service. The Commission regulates them as basic, however, because they are “‘basic’ in purpose and use and . . . bring maximum benefits to the public

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<sup>17</sup> Even if National Directory services were an information service, the Ameritech offering, in which the caller and the operator are always in the same LATA, would apparently not require a separate affiliate.

<sup>18</sup> In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, First Report and Order and Further Notice of Proposed Rulemaking, 5 Comm. Reg. (P&F) 696 (1996) (“Separate Affiliate Order”); on recon. 12 FCC Rcd. 2297 (1997); on further recon., Second Order on Reconsideration, FCC 97-222, rel. June 24, 1997.

<sup>19</sup> Separate Affiliate Order, 5 Comm. Reg. at 732 ¶ 102.

<sup>20</sup> Id. at 734 ¶ 107.

through their incorporation in the network.”<sup>21</sup> When a customer’s interaction with stored information has the sole purpose of facilitating the completion of a telephone call, the Commission will treat the service as adjunct to basic.<sup>22</sup> Using this reasoning, the Commission has always treated directory assistance as adjunct to basic:

The significance of purpose in identifying a “basic” adjunct to basic service is perhaps most clear in the case of directory assistance. When a customer uses directory assistance, that customer accesses information stored in a telephone company data base. Ordinarily, assuming the data base was in a computer, such a service would be considered enhanced. . . . The only significant difference between Dial-it [an enhanced service] and directory assistance is that the latter service provides only that information about another subscriber’s telephone number which is necessary to allow use of the network to place a call to that other subscriber. An offering of access to a data base for the purpose of obtaining telephone numbers may be offered as an adjunct to basic telephone service; an offering of access to a data base for most other purposes is the offering of an enhanced service.<sup>23</sup>

The Commission has adhered to these principles in assessing enhancements to Directory Assistance. Thus the Commission concluded that an Electronic Directory Assistance that would provide customers with access to a database, from which they could obtain the telephone number and address of a subscriber, is adjunct to basic.<sup>24</sup> It reached the opposite conclusion with respect to “reverse-

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<sup>21</sup> In the Matter of North American Telecommunications Association, Memorandum Opinion and Order, 101 FCC 2d 349, 359 ¶ 24 (1985).

<sup>22</sup> In addition to facilitating the completion of a call, an adjunct to basic service must not change the “fundamental character of telephone service.” Id. at 360 ¶ 27.

<sup>23</sup> Id. at 360 ¶ 26.

<sup>24</sup> In the Matter of Southwestern Bell Telephone Company Petition for Waiver of Section 69.4(b) of the Commission’s Rules, Revisions to Tariff F.C.C. No. 68, Memorandum Opinion and Order, 5 FCC Rcd. 3792, 3793 ¶ 13 (1990).

search” services, in which a caller provides a telephone number and is then provided the corresponding subscriber name and address:

We are not persuaded by the arguments of Bell Atlantic and SWBT that the primary purpose of the reverse-search capability is to facilitate the placement of a telephone call, making the service adjunct to basic . . . While this service enables customers to avoid calling a number without knowledge of the name and address of the called party, the additional information gained through the service – name and address – is not actually necessary to make the call. . . . We conclude that unlike directory assistance, which the Commission has found adjunct to basic because it provides information necessary to make a call, the reverse-search capability provides additional information that is not necessary to make a call (because the subscriber already has the telephone number) and which could be used for a number of other purposes.<sup>25</sup>

The status of Directory Assistance Service as a basic service stems from the fact that it provides telephone numbers to customers, thus permitting them to make calls. It has nothing to do with the geographic scope of the numbers provided by the service, the nature of the call that will result from the provision of a number, or the identity of the provider of that call. That is, everything the Commission considered to determine that Directory Assistance is appropriately adjunct to basic applies equally whether the resulting call is carried by U S WEST, by another local exchange carrier, or by an interexchange carrier.<sup>26</sup>

When a caller contacts U S WEST’s National Directory Assistance, he or she does so for the express purpose of obtaining a telephone number in order to place a

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<sup>25</sup> In the Matter of US West Communications, Inc. Petition for Computer III Waiver, Order, 11 FCC Rcd. 1195, 1199-1200 ¶ 30 (1995). Of course, U S WEST’s National Directory Assistance service does not include reverse-search capability.

<sup>26</sup> Indeed, the Act requires a BOC to make its Directory Assistance available to other carriers as a matter of “checklist” compliance. (47 U.S.C. § 271(c)(2)(B)(vii)(II).)

telephone call. That is precisely the function of ordinary Directory Assistance.

As a form of Directory Assistance, National Directory Assistance is adjunct to basic; it is not an information service.

2. U S WEST May Provide Centralized National Directory Assistance  
Connected By Means Of InterLATA Official Service Facilities

U S WEST provides Directory Assistance on a centralized basis. Callers to U S WEST's Directory Assistance may speak to an operator in the LATA from which they call, but the greater likelihood is that the operator will be in another LATA, and likely in another state. U S WEST has provided Directory Assistance in this fashion since before divestiture because doing so is far more efficient – and thus less costly – than maintaining Directory Assistance centers in each LATA.

Nothing in the Communications Act prohibits U S WEST from providing Directory Assistance services on a centralized – interLATA – basis. And, even if the Act could be construed to contain such a prohibition, Section 271(f) would allow it.<sup>27</sup> The MFJ Court determined early on that the MFJ permitted the BOCs to utilize interLATA “official” communications services to communicate with their customers, including the provision of Directory Assistance.<sup>28</sup> The centralized provision of Directory Assistance is thus a previously-authorized activity, permitted to the BOCs under Section 271(f).<sup>29</sup>

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<sup>27</sup> 47 U.S.C. § 271(f).

<sup>28</sup> United States v. Western Elec. Co., 569 F. Supp. at 1097-1101.

<sup>29</sup> 47 U.S.C. § 272(a)(2)(B)(iii) exempts previously-authorized interLATA telecommunications services from the separation requirements of Section 272. Separate Affiliate Order, 5 Comm. Reg. at 725 ¶ 78.



We have demonstrated above that National Directory Assistance is functionally no different than ordinary Directory Assistance, and that – whatever the result might have been under the MFJ – the Communications Act does not prohibit the BOCs from providing it. Therefore, the BOCs may utilize interLATA official service circuits to provide National Directory Assistance, just as they do all other Directory Assistance.

C. Local Exchange Carriers May Utilize The “411” Code To Provide National Directory Assistance

In its Complaint, MCI alleges that Ameritech’s use of the “411” code to provide its National Directory Assistance service is an “unreasonable practice” in violation of Section 201(b) of the Communications Act.<sup>30</sup> It bases this allegation on the Commission’s N11 Order.<sup>31</sup> There, however, the Commission merely concluded that a LEC may not use an “N11” code, including “411,” to provide an enhanced service unless it offers reasonable, nondiscriminatory access to that code to other enhanced service providers.<sup>32</sup> U S WEST does not use its 411 code to offer enhanced services such as reverse search.

To be sure, the Commission may be read to have concluded that Directory Assistance service beyond the “traditional” (i.e., local) Directory Assistance is an enhanced service.<sup>33</sup> We have demonstrated, however, that National Directory

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<sup>30</sup> MCI Complaint at 14.

<sup>31</sup> In the Matter of The Use of N11 Codes and Other Abbreviated Dialing Arrangements, First Report and Order and Further Notice of Proposed Rulemaking, 6 Comm. Reg. (P&F) 695 (1997) (“N11 Order”), pets. for recon. pending.

<sup>32</sup> Id. at 711 ¶ 48.

<sup>33</sup> See id. and n.170.

Assistance is not an enhanced service because it is properly categorized as adjunct to basic under the principles established by the Commission. Moreover, as we have further shown, the classification of a service as adjunct to basic has never turned on the geographic scope of the service. Rather, that determination turns on the purpose for which information is provided to the customer and whether that purpose is the customer's placing a telephone call.

Long-standing Commission precedent thus dictates that National Directory Assistance receive the same treatment as ordinary Directory Assistance, including the ability of customers to reach the service by means of the traditional "411" code.<sup>34</sup>

### III. CONCLUSION

For the reasons stated, U S WEST respectfully asks the Commission to determine that the Communications Act does not prohibit it from providing

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<sup>34</sup> Ameritech has filed a Petition for Clarification of the N11 Order on this issue. That Petition is pending Commission action. Ameritech's Petition for Clarification, CC Docket No. 92-105, filed Mar. 28, 1997.

National Directory Assistance, and that it may do so by means of interLATA official service circuits and using the "411" code.

Respectfully submitted,

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July 17, 1997

## **CERTIFICATE OF SERVICE**

I, Rebecca Ward, do hereby certify that on this 17th day of July, 1997, I have caused a copy of the foregoing **PETITION FOR DECLARATORY RULING** to be served via hand-delivery upon the persons listed on the attached service list.

  
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